IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.250 OF 2005

IN

SUMMARY SUIT NO.3562 OF 2003

Futurmal A. Shah ... Plaintiff

v/s

Ramdas S. Poonja and anr. ... Defendants

Mr S. Chopde for Plaintiff.

Mr Ajay Misar for Defendant No.1. in support.

CORAM : D.K.DESHMUKH J.

DATE : 17TH MARCH 2005

P.C.: -

1. This notice of motion is taken out by the defendant No.1 for setting aside the ex-parte decree passed in the summary suit. The reason that has been given by the defendant No.1 for not appearing in Court after the writ of summons was served on the defendant No.1 cannot accepted. However, as the defendant No.1 has expressed his willingness to deposit the amount of principal in Court and also to pay substantial amount as cost to the plaintiff, in my opinion, following order would meet the ends of justice.

2. In case the defendant No.1 deposits in this Court, with due notice to the plaintiff, an amount of Rs.50,000/- and pays to the Advocate appearing for the plaintiff an amount of Rs.10,000/- as cost of this motion within a period of one week from today and deposits further amount of Rs.1,70,000/- in this Court, again with due notice to the plaintiff, within a period of three months from today, the ex-parte decree passed against the defendant No.1 shall stand set aside.

3. In that event, the Vakalatnama filed by the learned counsel for defendant No.1 in this motion shall

be treated as Vakalatnama of the defendant No.1 in the summary suit and the plaintiff shall be free to take out summons for judgment.

4. The amounts deposited by the defendant No.1 shall be permitted to be withdrawn by the plaintiff on furnishing undertaking to the Court to redeposit the same if so directed by he Court and on such terms and conditions as may be directed by the Court. Disposal of the amounts to be deposited by the defendant No.1 and to be withdrawn by the plaintiff as above shall be governed by the order that may be passed by the Court either in the summons for judgment or in the civil suit.

5. In case the defendant No.1 does not deposit the amount as directed above, this notice of motion shall be treated as disposed and the plaintiff shall be entitled to execute the decree against defendant No.1. In that event, the plaintiff shall be entitled to proceed to sell the attached property of the defendant No.1 and the defendant No.1 has undertaken before me not to raise any objection to the sale of the property.

Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.